

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

MIDWEST SWIM & ACTIVE, LLC,)
Plaintiff,)
vs.) Case No. 05-0312-CV-W-FJG
J. KEVIN MCFALL, et al.,)
Defendants.)

ORDER

On October 13, 2005, the Court held a discovery dispute teleconference with the parties to this matter. The dispute concerns four subpoenas served by defendant J. Kevin McFall on non-parties Midwest Apparel Group (hereafter "MAG", plaintiff's parent company), Midwest Swimwear Group, LLC (MAG's predecessor), BKD, LLP (an accounting firm that prepared Midwest's corporate tax returns), and CBIZ Accounting Tax and Advisory (a second accounting firm). Plaintiff's counsel, who also represents the four non-parties, has filed objections to certain information sought in the subpoenas, stating that the documents sought are confidential/proprietary, irrelevant and privileged. Defendant McFall states that the information sought is relevant, in that defendant McFall believes that the documents will establish that plaintiff was profitable at all times relevant in this litigation.

After considering the arguments made by the parties, the Court finds that the information sought by defendant is overbroad, and certain of the information is confidential/privileged. Therefore, the specific objections made by each of the non-parties (see Doc. Nos. 45, 46, 47, and 48) are **SUSTAINED**. Furthermore, plaintiff's counsel indicated in the teleconference that Midwest Swimwear LLC, the predecessor company,

is willing to provide its tax and accounting records as the argument could be made that plaintiff's operation is a continuation of Midwest Swimwear LLC. Therefore, Midwest Swimwear shall produce those records to defendant.

IT IS SO ORDERED.

/s/ FERNANDO J. GAITAN, JR.
Fernando J. Gaitan, Jr.
United States District Judge

Dated: October 18, 2005.
Kansas City, Missouri.